

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

December 11, 2009

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 09HD-016

Hawaii

Sale of Abandoned State Road Reservation to Owners of Lots 1, 2A, 2B, 4, 5B, 6, 7, and 35, Lalamilo Farm Lots, Lalamilo and Waikoloa, South Kohala, Hawaii, Tax Map Keys: 3<sup>rd</sup>/6-6-05:19, 20, 22, 24, 25, 27, 29 & 32.

APPLICANT(s):

Lot 1	Royce Hirayama and Charlene Hirayama, husband and wife, as tenants by the entirety Nathan Hirayama and Cheryl E. Hirayama, husband and wife, as tenants by the entirety
Lot 2A	Lalamilo Farm Partners, L.P. a Hawaii Partnership
Lot 2B	Leslie Kameki Imaoka, Glenn Takao Imaoka, Marion Sachie Imaoka, and Eunice Sanae Laybon as Tenants in Common
Lot 4	Kawamata Farms, Inc.
Lot 5B	Earl T. Yamamoto
Lot 6	Raleigh T. Sakato, Trustee
Lot 7	Kiyosugu Hirako, Trustee Shizuko Hirako, Trustee
Lot 35	Roy S. Hori, Trustee Nobuko Hori, Trustee

LEGAL REFERENCE:

Section 171-6(6), Hawaii Revised Statutes, as amended.

LOCATION:

Lands of Lalamilo Farm Lots situated at Lalamilo and Waikoloa, South Kohala, Hawaii, and identified by Tax Map Keys: 3<sup>rd</sup>/6-6-05:19, 20, 22, 24, 25, 27, 29 & 32, as shown on the attached map labeled Exhibit A.

AREA:

Approximate areas of road reservation within the subject lots:

Lot 1	60,400 square feet	(1.387 acres)
Lot 2A	2,344 square feet	(.052 acres)
Lot 2B	43,436 square feet.	(.997 acres)
Lot 4	71,200 square feet	(1.635 acres)
Lot 5B	64,800 square feet	(1.488 acres)
Lot 6	92,048 square feet	(2.113 acres)
Lot 7	77,208 square feet	(1.780 acres)
Lot 35	54,560 square feet	(1.253 acres)

ZONING:

State Land Use District: Agriculture  
County of Hawaii CZO: Agriculture-5 acre

TRUST LAND STATUS:

The Waimea Bypass Highway right-of-way reservation is considered Section 5(b) lands of the Hawaii Admission Act.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CONSIDERATION:

One-time lump sum payment of the difference in fair market value with and without the reservation, to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable. The sale of the reservation affecting private lands would not involve the use of State lands or funds under Hawaii Revised Statutes, Chapter 343. To the extent the sale or release of the reservation relates to a property interest of the State in private lands, then the proposed disposition is exempt from the preparation of an environmental assessment under

the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, pursuant to Exemption Class No. 1 for "Operations, repairs or maintenance of existing structures, facilities, [or] equipment . . . involving negligible or no expansion or change of use beyond that previously existing".

DCCA VERIFICATION:

Kawamata Farms, Inc.:

Place of business registration confirmed:	YES <u>X</u>	NO <u>  </u>
Registered business name confirmed:	YES <u>X</u>	NO <u>  </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u>  </u>

Lalamilo Farm Partners, L.P.:

Place of business registration confirmed:	YES <u>X</u>	NO <u>  </u>
Registered business name confirmed:	YES <u>X</u>	NO <u>  </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u>  </u>

All other Applicants are natural persons or trusts and, as such, are not required to register with DCCA.

APPLICANTS REQUIREMENTS:

Applicants shall be required to:

- 1) Pay for an appraisal to determine the one-time payment of the difference in fair market value with and without the reservation;
- 2) Pay for the costs of public notice pursuant to section 171-16; and
- 3) Obtain title reports to ascertain ownership, where necessary, at Applicants' own cost and subject to review and approval by the Department.

REMARKS:

At its meeting of January 30, 1961, the Board of Land and Natural Resources approved the sale of Agricultural Farm Lots at Lalamilo, South Kohala, Hawaii, through a lottery process. The Lalamilo Farm Lots is an agricultural homestead subdivision with access to irrigation water through a State established Irrigation District. The lands within the project were partially acquired by land exchange with Parker Ranch and as a result many of the lots were conveyed from the State to the Applicants by Land Patent Grant and/or Deed. These conveyance documents included restrictions that limited uses to agriculture that was defined

as truck and orchard crops.

The Applicants own the properties north of the Lalamilo Farm Road. They are seeking to acquire a reservation in favor of the State of Hawaii to purchase an eighty (80) foot wide strip of land that was originally designated for a Waimea Bypass Highway when the State first created the Lalamilo Farm Lots Subdivision in the early 1960s. The State Department of Transportation has abandoned this route for its proposed bypass highway as indicated in a letter written by Brennon Morioka, Director of Transportation, to Roger Hirako of the Lalamilo Farmlots Association. See Exhibit B attached.

The deeds to all the lots contain reservation language providing substantially as follows:

“RESERVING ALSO to the State of Hawaii, its successors and assigns, the right to purchase the land required for the proposed Waimea Bypass Highway (80 feet wide), together with all rights of access to and from said highway, at the same unit price per acre as paid by the Grantees herein to the State of Hawaii. The location of said Waimea Bypass Highway is to be along the...[specific location] boundary of...[lot number] as shown of plan attached hereto and made a part hereof. The State shall not pay for any improvements within the 80-foot road strip and no structure of a permanent nature shall be placed thereon.”

Applicants are the owners of parcels 3<sup>rd</sup>/6-6-05:19, 20, 22, 24, 25, 27, 29 & 32 based upon staff's research of the County of Hawaii, Real Property Tax Office web site. Lot 3 (TMK: 3<sup>rd</sup>/6-6-05:21) is a State owned parcel currently encumbered under GL S-4548, recently transferred to the Department of Agriculture pursuant to Act 90, SLH 2003 and is not included in this disposition.

The Applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

By memorandum dated April 17, 2009, staff solicited comments from the agencies listed below with the following results:

Agency	Comments
State:	
Department of Health, Environmental Division	No response
Department of Hawaiian Home Lands	No comments
DLNR, DOFAW – Na Ala Hele	No response

DLNR, Historic Preservation	No historic properties will be affected by the proposed action
Department of Transportation, Highways Division	No comments
Office of Hawaiian Affairs	No response
County:	
Planning Department	Opposes the sale of the road reservation until such time as a route for the Lalamilo Connector Road between Kawaihae Road and Mamalahoa Highway is finalized and non-appealable. See Exhibit C attached.
Department of Public Works	Opposes the sale or extinguishment of the road reservation until the right-of-way for the Lalamilo Connector Road is identified and acquired. See Exhibit D attached.
Police Department	No objections
Fire Department	No comments
Federal:	
Army Corps of Engineers	No response

In addition, the Department of Agriculture submitted comments to the effect that any bypass road in the area should be separated from the Lalamilo Farm Lots by a buffer of 800-1,000 feet.

In light of the County's opposition to the sale of the road reservation, staff requested a legal opinion from the Department of the Attorney General on how to handle the situation. A deputy attorney general in the Land/Transportation Division issued a written opinion on September 16, 2009 finding that the road reservation covered the Waimea Bypass Highway project, which Brennon Morioka's letter of September 9, 2008 (Exhibit B) confirms is going forward at another location. The opinion concluded that the County cannot exercise the road reservation for its own roadway project, the Lalamilo Connector Road, because such use would be inconsistent with the specific reservation language of the Land Patent Grants and Deeds. The opinion added that the Board may negotiate a release of the reservation as requested by Applicants.

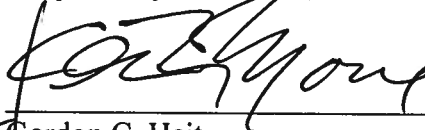
#### RECOMMENDATION:

That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

2. Determine that the reservation for the Waimea Bypass Highway contained in the Land Patent Grants and Deeds for the subject properties is no longer needed since the Department of Transportation has relocated the Waimea Bypass Highway.
3. Subject to the Applicants fulfilling all of the Applicant Requirements listed above, authorize the sale of the abandoned State road reservation to the Applicants to the extent their respective subject parcels are encumbered by the reservation, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - a. The standard terms and conditions of the most current sale, release or waiver of reservation form, as may be amended from time to time;
  - b. Review and approval by the Department of the Attorney General; and
  - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

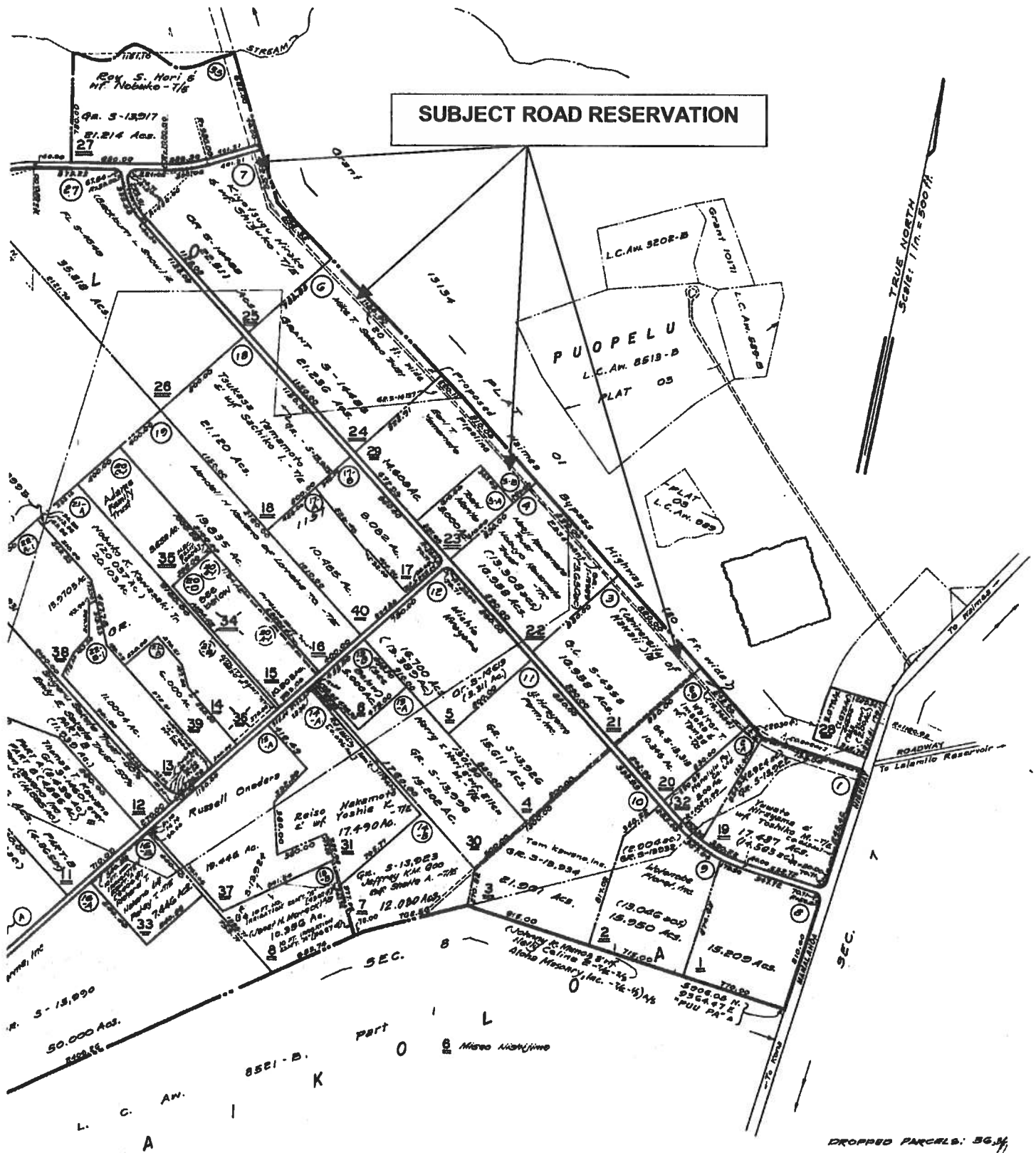
Respectfully Submitted,

  
\_\_\_\_\_  
Gordon C. Heit  
Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Laura H. Thielen, Chairperson

# EXHIBIT A



28 (Dept. of Agriculture)  
Exec. Ord. 2413  
KAMUELA VACUUM COOLING PLANT SITE  
(Kamuela Vacuum Cooling Cooperative, Ltd.)  
Rev. Pmt. 5-5871-A over Chas. Co.

15 George U. Nakagawa & Co.  
Charles D. T. Co.

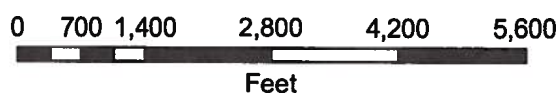
Note: All parcels owned by the State of Hawaii unless otherwise noted.

FOR REAL PROPERTY TAXATION PURPOSES  
SUBJECT TO CHANGE

DEPARTMENT OF TAXATION TAXATION MAPS BUREAU STATE OF HAWAII		
TAX MAP		
THIRD TAXATION DIVISION		
ZONE	SEC.	PLAT
6	6	05
SCALE: 1 IN. = 500 FT.		



# EXHIBIT A





LINDA LINGLE  
GOVERNOR



BRENNON T. MORIOKA  
DIRECTOR

Deputy Directors  
MICHAEL D. FORMBY  
FRANCIS PAUL KEENO  
BRIAN H. SEKIGUCHI  
JIRO A. SUMADA

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:  
HWY-R  
3.86213

SEP - 9 2008

Mr. Roger Hirako  
Co-Chairman, Lalamilo Farmlots Association  
P. O. Box 1834  
Kamuela, Hawaii 96743

Dear Mr. Hirako:

SUBJECT: REQUEST TO DELETE STATE'S RIGHT TO PURCHASE LANDS  
REQUIRED FOR THE WAIMEA BYPASS HIGHWAY AS FOUND IN  
DEED RESERVATION IN LALAMILO FARMLOT LANDS

Thank you for your letter dated August 6, 2008 regarding the subject matter.

The lands reserved in your Deeds are no longer required for the proposed Waimea Bypass Highway Project. You are welcome to approach the Department of Land and Natural Resources to officially request removing this reservation from the affected Deeds.

Additionally, the County of Hawaii is in the process of completing an environmental document for their Lalamilo Connector, which considers parcels at Mamalahoa Highway and the last farm lot. This proposed project has been identified in the County General Plan and in the County Waimea Traffic Circulation Plan.

Thank you for your patience in this matter. If you have any questions, please call Dean Yogi of my Right-of-Way staff at (808) 692-7325 or Ken Tatsuguchi of my Planning staff at (808) 587-1830.

Very truly yours,

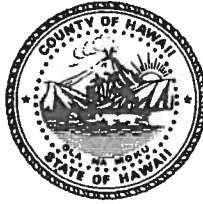
A handwritten signature in black ink, appearing to be "BM", with a long horizontal line extending to the right.

BRENNON T. MORIOKA, PH.D., P.E.  
Director of Transportation

c: County of Hawaii, Department of Public Works

# EXHIBIT C

William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

2009 MAY -8 P 1:19

## County of Hawai'i

### PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720  
Phone (808) 961-8288 • Fax (808) 961-8742

RECEIVED  
LAND DIVISION  
HAWAII

May 4, 2009

Mr. Gordon Heit  
Land Agent  
Land Division  
Department of Land and Natural Resources  
State of Hawaii  
75 Aupuni Street, Room 204  
Hilo, Hi 96720

Dear Mr. Heit:

**SUBJECT: Acquisition of Abandoned State Road Reservation**  
**TMK: (3) 6-6-005:0019, 20, 22, 24, 25, 27, 29 & 32; Portion of Lālāmilo Farm Lots, Lālāmilo and Waikoloa, Waimea, South Kohala, Hawai'i**

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We are in receipt of a request for comments regarding the acquisition of an abandoned state road reservation.

The subject eighty (80) foot wide road reservation easement was originally designated for a Waimea by-pass highway when the Lālāmilo Farm Lots Subdivision was created. This subdivision (SUB No. 1704) received final subdivision approval on September 6, 1961. The applicants are the various property owners of the properties north of the Lālāmilo Farm Road.

The Planning Department does have some concerns with the potential acquisition of the subject road reservation easement by the applicants. Although the State of Hawai'i Department of Transportation has abandoned this route for its proposed bypass highway, until such time as an actual route for the Lālāmilo Connector Road between the Kawaihae Road and the Māmalahoa Highway is finalized and non-appealable, the Planning Department opposes the sale of the road reservation. This position is also shared by the County of Hawai'i Department of Public Works. We have no further comments to offer at this time.

Mr. Gordon Heit  
Land Agent  
Land Division  
Department of Land and Natural Resources  
Page 2  
May 4, 2009

If you have any questions, please feel free to contact Bethany Morrison of this office at 961-8288, extension 252.

Sincerely,

A handwritten signature in black ink, appearing to read "BJ Leithhead Todd". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

BJ LEITHEAD TODD  
Planning Director

BJM:cs

P:\wpwin60\Bethany\General Zoning Inquiries\DLNRacquisitionofabandonedstateroadreservation.doc

DEPARTMENT OF PUBLIC WORKS  
COUNTY OF HAWAII  
HILO HAWAII

EXHIBIT D

*Memorandum*

Date : May 5, 2009

To : GORDON HEIT, Land Agent

From : WARREN H.W. LEE, Director



RECEIVED  
LAND DIVISION  
HILO, HAWAII  
2009 MAY - 6 PM 2:40

**SUBJECT: ACQUISITION OF ABANDONED STATE ROAD RESERVATION**  
**Lalamilo Farm Lots, Lalamilo, South Kohala, Hawai'i**  
**Tmk: 3<sup>rd</sup>: 6-6-05: 19, 20, 22, 24, 25, 27, 29 & 32**

The Department of Public Works is conducting an Environmental Assessment/Impact Statement to establish a road between the Kawaihae Road and the Mamlahoa Highway, that we have identified as the Lalamilo Connector Road. The Lalamilo Connector Road would be located through, or in the vicinity of the subject road reservation and would be a continuation of the Parker Ranch Connector Road. When the Parker Ranch and Lalamilo Connector Roads are complete, there will be a new roadway from Kamamalu Road to Kawaihae Road that would bypass the congested Lindsey Road intersection.

The Waimea Traffic Circulation Study that was completed in December 2007 by PB Americas, Inc. for our Planning Department, identified the Parker Ranch and Lalamilo Connector Roads as a necessary element to improve traffic circulation in Waimea. Consequently, the Department of Public Works opposes the sale or the extinguishing of the subject 80 foot right of way until the right of way for Lalamilo Connector Road is identified and acquired.

Should you have any questions, please contact Galen Kuba, Engineering Division Chief at 961-8422 or at [gkuba@co.hawaii.hi.us](mailto:gkuba@co.hawaii.hi.us).

cc: Planning  
Police  
Fire